

Title 2. Administration
Division 1. Administrative Personnel
Chapter 3. Department of Human Resources
Subchapter 1. General Civil Service Rules
Article 27. 457 Deferred Compensation Plan
Section 599.942 Investments

DEPARTMENT OF HUMAN RESOURCES INITIAL STATEMENT OF REASONS

I. Purpose and Rationale for the Proposed Regulatory Changes

The proposed amendment to section 599.942 would broaden the scope of a regulation enforced by the Department of Human Resources (CalHR) to align with the applicable Government Code section. Until 2019, Savings Plus was statutorily required to offer specific investment options, including annuity products. Senate Bill 1504 (Chapter 903, Statutes of 2018), amending the requirement and granted Savings Plus “exclusive authority to determine the investment products provided in the core portfolio, specifying “a broad range of investment options” as well as a brokerage option be offered (Gov. Code, section 19993.05, subd. (b).) This section is now known as the Freedom of Financial Choice Act. Savings Plus’ regulation section 599.942 reflects the outdated statutory requirements and must be amended to reflect current statute.

The primary problem with the current regulatory language is the requirement to offer two annuities. Annuities are not compatible with the nature of the program because they require participants to have a long-term relationship with an individual annuity provider over the course of the annuity payout, which can provide lifetime payments. Typically, Savings Plus contracts last only five to seven years based on the state’s competitive bidding process which can be at odds with the participant’s long-term relationship with the annuity provider. Additionally, annuities have relatively high fees and costs over other available investment options and thus present a conflict with the program’s fiduciary role to minimize costs.

Further, the current language requires a mutual fund provider, but this may not be the most prudent option for the program. Mutual funds can be a costlier option for Savings Plus when contracting with investment managers while providing no additional benefit. Thus, there is no reason why Savings Plus should be required to include mutual funds in the program by its regulations.

II. Technical, Theoretical, and/or Empirical Study, Reports, or Documents

This is a modification of a regulation to broaden the scope of a regulation enforced by the Department of Human Resources (CalHR) Savings Plus Program (Savings Plus) to align with the applicable Government Code section. The proposed regulation will remove the requirement to offer certain specified investment options, will align regulatory language with the amended Government Code section 19993.05 and existing Savings Plus Plan Document language, and allow Savings Plus the flexibility to offer the investment options that are in the best interest of participants.

III. Economic Impact Assessment/Analysis

Purpose

The proposed regulation will remove the requirement to offer certain specified investment options, will align regulatory language with the amended Government Code section 19993.05 and existing Plan Document language, and allow Savings Plus the flexibility to offer the investment options that are in the best interest of participants.

Creation or Elimination of Jobs Within the State of California

The regulation is an internal governmental effort to harmonize the regulation with Savings Plus Plan Documents and Government Code section 19993.05. It does not extend to any program that affects the general public. Therefore, the proposed amended regulations will not affect the creation or elimination of jobs within the State of California.

The Creation of New Business or the Elimination of Existing Businesses Within the State of California

The regulation is an internal governmental effort to harmonize the regulation with Savings Plus Plan Documents and Government Code section 19993.05. It does not extend to any program that affects the general public. Therefore, the proposed amended regulations will not affect the creation or elimination of new business within the State of California.

The Expansion of Businesses Currently Doing Business Within the State of California

The regulation is an internal governmental effort to harmonize the regulation with Savings Plus Plan Documents and Government Code section 19993.05. It does not extend to any program that affects the general public. Therefore, the proposed amended regulations will not affect the expansion of new business within the State of California.

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The regulation is an internal governmental effort to harmonize the regulation with Savings Plus Plan Documents and Government Code section 19993.05. It does not extend to any program that affects the general public. Therefore, the proposed amended regulations will not affect the expansion of new business within the State of California.

IV. Evidence Supporting Finding of No Significant Statewide Adverse Economic Impact Directly Affecting Business

CalHR has found no evidence that the amended regulation would impose a significant statewide adverse economic impact affecting business.

V. Reason alternatives to the Regulation and the Agency's Reasons for Rejecting those Alternatives

The first alternative is to leave the regulations unmodified. This alternative does not resolve the identified problem and would create a conflict. Savings Plus could be expected to offer annuity products,

which have been deemed incompatible with the Savings Plus Plan's fiduciary obligations. Additionally, Savings Plus has not received bids on recent request for proposal for annuity products. Therefore, left unmodified, the Savings Plus Program could be deemed out of compliance with regulations.

The second alternative is to amend the regulations to allow Savings Plus discretion over the type and number of investment options offered by the program. This alternative would not be compliant with Government Code section 19993.05, which requires of "a broad range of investment options" because it could lead to offering as few as one investment option for plan participants.